Schaffer Law, LLC
Labor and Employment Law

Recovering Sales Draws and Advances Paid in Excess of Earned Commissions

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Sales representatives often are paid a "draw" against future earned commissions. When a representative leaves the company, and has been paid a draw that exceeds actual earned commissions, employers will forfeit the overpayment, unless the situation has been addressed in an agreement between the parties.

The Connecticut Supreme Court addressed this issue and found an employee does not have to repay advances or draws that exceed earned commissions, unless an express or implied agreement requires him to do so. *Ravetto v. Triton Thalassic Tech., Inc.*, 285 Conn. 716 (2008).

In *Ravetto* the company sought repayment of some $40,000 in advances paid as a draw against commissions to its Vice President of Sales. In reaching its decision the Court reviewed the law in various states and found the majority rule requires an express or implied agreement be in place for an employer to recoup advances exceeding earned commissions. The use of the terms "advance" or "draw" are insufficient to support an argument for repayment.

The Court further explained that the employer usually drafts the employment or commission agreement and its failure to include specific repayment language should not be held against the employee. It also reasoned that providing advances or draws is a method of sharing the risk between the parties with regard to future unknown sales revenues. Requiring an employee to repay all unearned commissions without an express agreement to do so places all the risk on the employee, which the Court found is contrary to the nature of a joint relationship.

Employers should review their employment and commission agreements for compliance with the findings of the Court to permit recovery of unearned commissions upon the termination of employment.

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